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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.06.2007

CORAM

THE HONOURABLE MR.JUSTICE M.CHOCKALINGAM

C.R.P.NPD.NO.17 OF 2003
AND
C.M.P.NO.154 OF 2003

The Managing Partner,
M/s.Mani Bakery
No.34/20, Katpadi Road,
Vellore. .. Petitioner[Appellant/Tenant]

Vs.

M/s.Srilakshmi Ganapathy
Chit Funds
rep. by its Managing Partner,
P.Muniratnam,
25-'D' Mundy Street,
Vellore-4. .. Respondent[Respondent/Landlord]

This civil revision petition has been preferred under Section 25 of the Tamil Nadu Building (Lease and Rent Control) Act, 18/60 as amended by Act 23/73 and by Act 1/80 against the order and decreetal order of the Sub Court, Vellore, dated 21.10.2002 in R.C.A.No.6 of 2001, which confirms the decreetal order of the Rent Controller/Principal District Munsif, Vellore, dated 30.4.2001 passed in RCOP No.43 of 1996.

For Petitioner : Mr.P.Senthurpandian
For Respondent : Mr.T.R.Rajaraman

ORDER

Challenging an order of the Rent Control Appellate Authority, Vellore made in R.C.A.No.6 of 2001, affirming the order of the learned Rent Controller of the said place, passing an order of eviction in R.C.O.P.No.43 of 1996 on the ground of willful default, this civil revision petition has been brought forth by the revision petitioner/tenant.

2.Heard the learned counsel for the revision petitioner and also the learned counsel for the respondent.

3.Admittedly, the respondent/landlord came forward with a petition under Section 10(2)(i) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, seeking an order of eviction on the ground of willful default, alleging that the revision petitioner is the tenant in the premises belonged to the landlord for a monthly rental of Rs.300/-; that there was due from September, 1995 to November, 1995 and thus, he has

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committed willful default; that despite a demand made, the rental was not paid and hence, the landlord has filed the petition for eviction. The said petition was contested by the tenant/revision petitioner herein, stating that he has been making payment all along; that in the first week of October, 1995, the rental for the month of September, 1995 was tendered and equally, the rental for the month of October, 1995 was tendered in the first week of November, 1995; that on both the occasions, it was informed by the clerk of the landlord that the receipt book was not available and hence, he could not make the payment; that he sent two months rental by way of money order, but it was refused; that when there was notice issued by the landlord through his counsel, all the four months rental were sent by way of demand draft and thus, on the date of fling of the petition, there was no due and hence, the petition was to be dismissed. On enquiry, the learned Rent Controller passed an order of eviction holding that there was willful default on the part of the revision petitioner/tenant. Aggrieved the tenant took it on appeal before the appellate forum and the appellate forum has also affirmed the order of the learned Rent Controller and hence, this revision petition has been brought forth before this Court.

4.Advancing his arguments on behalf of the revision petitioner/tenant, the learned counsel would submit that in the instant case, the agreed rental was Rs.300/-; that the tenant has also been making the rental regularly and there was no irregularity at any point of time; that the rental due, even according to the petitioner, was from September, 1995 to November, 1995; that once there was a demand made by way of notice through the counsel, the amounts were actually paid by way of demand draft for a period of four months, including December, 1995 along with reply notice and that on the date of filing of the petition, there was no rental arrears at all. The learned counsel would further add that in the instant case, all along the period, the rental has been paid and there was no default much less willful default, warranting eviction and hence, the order of both the authorities below have got to be set aside.

5.Heard the learned counsel for the respondent on the above contentions.

6.After careful consideration of the rival submissions made and scrutiny of the materials available, the court is unable to agree with the revision petitioner/tenant. Admittedly, the revision petitioner is the tenant under the respondent/landlord in respect of the premises in question by making payment of Rs.300/- per month. According to the revision petitioner, there was due from the month of September, 1995 to November, 1995. What was all contended by the tenant before the courts below and equally here also was that when the rentals were tendered, it was not received, stating that the receipt book was not available. If to be so, an application could have been made by the tenant before the court for depositing the same, but not done so. In the counter, it has been specifically averred that for the months of September, 1995 and October, 1995, the rentals were sent through money order and it was refused, but no materials are placed before the court to show that any amount was sent by way of money order. Thus, it would be indicative of the fact that it was a tissue of falsehood and it is also not even for a period of three months and thus, the revision petitioner/tenant has committed willful default.

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7.The added circumstance against the revision petitioner is that from the commencement of R.C.O.P. till the end of the appeal proceedings, he was not regular in making payment of rental at any point of time. It could be seen from the order that from January, 1997 to January, 1999, i.e. for a period of 25 months, the rental was paid in lump sum and a memo was filed and thus, from the commencement of R.C.O.P. till the end of appeal proceedings, the tenant was not regular in making payment at any point of time. Hence, the court has to necessarily take notice of all the facts also. Under these circumstances, the court is of the considered opinion that the orders of the authorities below have got to be sustained. Accordingly, the civil revision petition fails and the same is dismissed. No costs.

8.Taking into consideration the fact that the revision petitioner/tenant is running a shop for more than three decades and he has to find out a suitable accommodation to run his shop, the Court is of the considered opinion that it is a fit and proper case where reasonable time has got to be given to the tenant to find out a place. Accordingly, nine months time is granted to the revision petitioner/tenant for vacating the premises and handing over the same to the respondent/landlord. Till that time, the revision petitioner/tenant is directed to make payment as per the fair rent fixed by the authority below. He is also directed to file an undertaking affidavit to that effect within a period of two weeks from the date of receipt of copy of this order. Consequently, connected CMP is also dismissed.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

vvk

To
1.The Subordinate Judge,
Vellore.
2.The Rent Controller/
Principal District Munsif,
Vellore.
3. The Record Keeper, VR Section, High Court, Madras.
+ 1 CC To Mr. T.R.Rajaraman, Advocate SR NO.31987
+ 1 CC To Mr. P.Senthurpandian, Advocate SR NO.32133

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